

**REMARKS**

Claims 1-4, 6-10 and 11-40 are pending. Claims 16-39 have been withdrawn. Claims 5 and 11 have been cancelled herein. Claims 1, 9 and 40 have been amended herein. Support for the amendments is based on original claims 5 and 11 as well as the disclosure at page 26, lines 29-36 and Fig. 13A of the specification.

**Applicants' Response to Claim Rejections under 35 U.S.C. §102(e)**

Claims 1-5, 7-12 and 14-15 currently stand rejected under 35 U.S.C. §102(e) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Patelmo (U.S. Patent No. 6,251,728). In response thereto applicants have amended the claims to more distinctly claim the subject matter of the invention.

Applicants have amended claim 1 to include the limitation of original claim 5, the protection insulating film continuously covers a top surface of the first gate electrode, and the additional feature that the protection insulating film covers the multilayer gate electrode uniformly. Additionally, claim 9 has been amended to include the limitations of original claim 11, the protection insulating film continuously covers a top surface of the first gate electrode, and the additional feature that protection insulating film covers the first gate electrode uniformly. Claim 40 has been amended to include the additional features of the protection insulating film continuously covers a top surface of the floating gate electrode and the protection insulating film covers the floating gate electrode uniformly. Applicants respectfully submit that Patelmo does not disclose nor suggest the limitations of amended claims 1, 9 and 40. Specifically, the layer

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designated by the Office Action as the equivalent to the protection insulating film in Patelmo, the interpoly dielectric layer 31 does not uniformly cover the floating gate regions 27b. Wherefore, in light of these amendments, applicants respectfully request favourable reconsideration.

**Applicants' Response to Claim Rejections under 35 U.S.C. §103(a)**

Claims 8 and 15 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Patelmo (U.S. Patent No. 6,251,728) in view of Applicant Admitted Prior Art (APA); claims 6 and 13 currently stand rejected as being unpatentable over Patelmo in view of Prall et al. (U.S. Patent No. 6,406,959). Claims 6, 8, 13 and 15 are dependent from base claims 1 and 9 discussed above. Applicants respectfully request favorable reconsideration in view of the amendments to the respective base claims.


In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

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If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,  
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